

UNITED STATES DISTRICT COURT
FOR THE DISTRICT OF NEW HAMPSHIRE

PHEASANT LANE REALTY TRUST

Plaintiff

vs.

PAWSENCLAWS & CO., LLC AND
STEPHEN MANDELL

Defendants

CIVIL ACTION NO. _____

DEFENDANT STEVEN H. MANDELL'S NOTICE OF
REMOVAL TO THE UNITED STATES DISTRICT COURT FOR THE DISTRICT OF
NEW HAMPSHIRE, AND DEMAND FOR JURY TRIAL

NOW COMES the defendant, Steven¹ H. Mandell ("Mandell" or "defendant Mandell"), by and through his attorneys, Cleveland, Waters and Bass, P.A., and states as follows in support of this Notice of Removal to the United States District Court for the District of New Hampshire:

1. Mandell requests removal pursuant to 28 U.S.C. §1446. This court has jurisdiction under 28 U.S.C. §1332. All parties are diverse and the amount in controversy exceeds \$75,000.

2. The plaintiff commenced the underlying action in the Hillsborough County (South) Superior Court by means of a Writ of

¹ Steven is spelled "Stephen" on the Writ of Summons.

Summons dated December 7, 2006 (the "Writ of Summons"). Pursuant to 28 U.S.C. §1446(a), a true and accurate copy of the Writ of Summons (without the referenced exhibits, which were not served on Mandell) is attached hereto and incorporated herein as Exhibit 1.

3. Removal is timely under 28 U.S.C. §1446(b) because less than 30 days have elapsed since Mandell first received the Writ of Summons after December 7, 2006.

4. As stated in the Writ of Summons, the plaintiff is a Massachusetts Trust.

5. As stated in the Writ of Summons, Mandell is a citizen of New Jersey.

6. As stated in the Writ of Summons and on information and belief, Pawsenclaws & Co., LLC ("Pawsenclaws" or "defendant Pawsenclaws") is a Delaware limited liability company with a principal place of business in New Jersey.

7. The two-count Writ of Summons alleges breach of contract (Count I) against Pawsenclaws stemming from an alleged lease to rent retail space in the Pheasant Lane Mall, and breach of contract (Count II) as to Mandell arising out of an alleged personal guaranty of Pawsenclaws' obligations under the lease. See Exhibit 1.

8. The plaintiff alleges that the minimum annual rent for the leased premises was between \$121,600 and \$147,200, depending

on the year, and the plaintiff has alleged that Pawsenclaws did not make timely rental payments starting in or about October of 2005 and voluntarily vacated the premises sometime after September 6, 2006. See Exhibit 1, Page 2 of specification to Writ of Summons.

9. The plaintiff has also alleged that Pawsenclaws is indebted to the plaintiff in the amount of \$1,376,685.92. Id.

10. Under the terms of the alleged Guaranty, Mandell's obligation is capped at the lesser of two years' rent and charges due under the lease, or the amount due for the remainder of the lease term, whatever is less. This would in any event exceed \$75,000 given the minimum annual rent exceeds \$120,000.

11. When objectively viewed on its face, the Writ of Summons demonstrates that the amount in controversy exceeds \$75,000.

12. Certified copies of all documents filed in the Superior Court will be requested from the Superior Court and filed with this court pursuant to Local Rule 81.1(c).

13. Pawsenclaws has been contacted and consents to and joins in Mandell's removal request as stated in the Notice of Consent to Removal attached hereto and incorporated herein by reference as Exhibit 2.

14. Mandell hereby demands a trial by jury on all counts so triable.

15. Mandell is filing a timely Notice of Filing of Notice of Removal with the Hillsborough County Superior Court. See Exhibit 3.

WHEREFORE, Mandell respectfully requests that this Honorable Court:

A. Order that the case is removed to this court pursuant to 28 U.S.C. §1446;

B. Order that all proceedings in the Hillsborough County (South) Superior Court are stayed;

C. Make any and all other appropriate orders necessary to implement removal; and

D. Order such other and further relief as is just, equitable and appropriate;

Respectfully submitted

STEVEN H. MANDELL
By and through his Attorneys,
CLEVELAND, WATERS AND BASS, P.A.

Date: JANUARY 4, 2007

By: /s/ William B. Pribis
William B. Pribis (Bar#11348)
Two Capital Plaza
P. O. Box 1137
Concord, NH 03302-1137
603-224-7761
pribisw@cwbp.a.com

CERTIFICATE OF SERVICE

I hereby certify that a copy of the foregoing has been electronically forwarded this 4th day of January, 2007 to Amy J. Vesely, Esquire, Counsel for the plaintiff and George R. Moore, Esquire, Counsel for Pawsenclaws.

/s/ William B. Pribis
William B. Pribis (Bar#11348)